

## THE ATTORNEY GENERAL OF TEXAS

**AUSTIN 11, TEXAS** 

WAGGONER CARR ATTORNEY GENERAL

December 10, 1965

RE:

Mr. Jess M. Irwin, Jr.
Executive Director
Texas Department of Mental
Health and Mental Retardation
Box S, Capitol Station
Austin, Texas 78711

Opinion No. C-564

Whether the Texas Board of Mental Health and Mental Retardation is authorized to dispose of land at the Abilene State School under the provisions of Article 3232c, V.C.S.

Dear Mr. Irwin:

In your letter of November 9, 1965, you requested an Attorney General's Opinion with reference to the following question:

"May the new Texas Board of Mental Health and Mental Retardation under the procedures outlined in Senate Bill 133 (Art. 3232c, V.C.S.) . . . dispose of land at the Abilene State School and convey good and marketable title to such land?"

As pointed out in your letter, Section lofsaid Article 3232c authorizes the Board of Texas State Hospitals and Special Schools, which was abolished effective September 1, 1965, in its discretion to determine land in excess of the needs of the operation of the Abilene State School and thereafter sell same for cash, as follows:

"The Board for Texas State Hospitals and Special Schools is hereby authorized in its discretion to determine land in excess of the needs of the operation of the Abilene State School and thereafter sell and convey for cash any land which it has determined is no longer needed for the proper operation of the Abilene State School."

Sections 2 through 5 of said Article 3232c provide respectively, in connection with any sale of excess land of the Abilene State School, for certain notice to the State Highway Department and Board of Control, advertising and receiving bids, certain reservations of royalty

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interests, and execution of deeds by "the chairman of the Board for Texas State Hospitals and Special Schools or a member of the central office staff, authorized by an appropriate resolution of the Hospital Board."

The Mental Health and Mental Retardation Act (H.B. #3, ch. 67, Acts of the 59th Leg., R.S., 1965), which abolishes the Board for Texas State Hospitals and Special Schools and creates the Texas Board of Mental Health and Mental Retardation to "formulate the basic and general policies" for the Texas Department of Mental Health and Mental Retardation formed under the Act, became effective on September 1, 1965.

Said Act provides for election of a Chairman and appointment of a Commissioner by the Board and for appointment of two Deputy Commissioners by the duly appointed Commissioner. The responsibility for the effective administration of the programs and services of the Department is given to the Commissioner by Section 2.12(a) of the Act. Said Act further provides for a staff under the direction of the Commissioner and Deputy Commissioners.

Said Act does not provide for the repeal of said Article 3232c.

One of the stated purposes of said Act is "...
to provide for the effective administration and coordination of mental health services at the State and local levels, and to provide, coordinate, develop, and improve services for the mentally retarded persons of this State ..."

Said Act contains no clear language specifically authorizing the sale and conveyance of excess land of the Abilene State School by the newly formed Texas Department of Mental Health and Mental Retardation, as is found in said Article 3232c, which has apparently raised a question in your mind regarding said Department's authority to make such sales and convey marketable title.

The following rule has been long established in this State:

"When an old law is superseded by a new one, and the latter is vague and indefinite in any of its provisions, it is not improper to refer to the former to settle the meaning

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of such provisions." S. D. Steadman v. Merchants and Planters Bank of Sherman, 69 Tex. 50, 6 S.W. 675 (1887).

Nothing in the <u>Mental Health and Mental Retardation</u>
<u>Act</u> evidences any intent to change the provisions of
Article 3232c. On the contrary, Section 2.16(a) of
said Act provides in part as follows:

"All powers, duties, and functions . . . relating to the administration of mental health or mental retardation services, previously vested in the Board for Texas State Hospitals and Special Schools . . . are transferred to the Texas Department of Mental Health and Mental Retardation."

Similar language is also included in the caption to the Act, as follows:

"An Act . . . transferring to the new department certain powers, duties, functions, property, records, and personnel of the . . . Board for Texas State Hospitals and Special Schools . . . "

If said Act, by the aforementioned language of Section 2.16(a) does not expressly clothe the Texas Department of Mental Health and Mental Retardation with the power previously given to the Board for Texas State Hospitals and Special Schools by said Article 3232c to sell and convey excess land of the Abilene State School, then clearly the implication of such power is contained in the quoted language of both Section 2.16(a) and the caption; and the courts have held in this State that "that which is implied in a statute is as much a part of it as what is expressed." McCamey v. Hollister Oil Company, 241 S.W. 689 (1922), aff. 274 S.W. 562 (1925).

Furthermore, by considering Section 2.16(b) of said Act, which provides that "all land, buildings, facilities, and property . . . used by the Board for Texas State Hospitals and Special Schools . . . are transferred to the Texas Department of Mental Health and Mental Retardation," and Section 2.17 of said Act which provides that "the Department shall have exclusive management and control of . . . the Abilene State School, "the legislative intent in enacting the Mental Health and Mental Retardation Act appears to embrace a transfer of authority under said

Article 3232c to the Texas Department of Mental Health and Mental Retardation. Texas courts have consistently given effect to legislative intent and have held that, in determining legislative intent, a court "should not look alone to any one phrase, clause, or sentence of the act, but to the entire act; and this includes caption, (and) the body of the act. . . " Reed v. City of Vaco, 223 S.W.2d 247, (Tex.Civ.App., 1949, error ref.)

Therefore, the answer to your question is determined not only from the express words of Sections 2.16(a) and (b) and 2.17 and the other express provisions and caption of the Mental Health and Mental Retardation Act but also (1) from what is implied therein, and (2) by reference to the powers of the former Board for Texas State Hospitals and Special Schools under said Article 3232c.

It follows that the newly created Texas Board of Mental Health and Mental Retardation may sell and convey for cash excess land of the Abilene State School under the provisions of Article 3232c and, with reference to such sales, authorize by appropriate resolution the execution of deeds to such land by the Commissioner in accordance with the authority therein granted to the abolished Board for Texas State Hospitals and Special Schools, which authority has been transferred to said Texas Department of Mental Health and Mental Retardation by virtue of the Mental Health and Mental Retardation Act.

## SUMMARY

The Board of Mental Health and Mental Retardation created by the Mental Health and Mental Retardation Act (H.B. #3, ch. 67, Acts of the 59th Leg., R.S. 1965) is authorized under and by virtue of said Act in its discretion to determine land in excess of the needs of the operation of the Abilene State School and thereafter sell and convey for cash any land which it has determined is no longer needed for the proper operation of the Abilene State School and. with reference to such sales, to authorize by appropriate resolution the execution of deeds to such land by the Commissioner in accordance with all of the provisions for sale of such land contained in Article 3232c (V.C.S.).

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Very truly yours,

WAGGONER CARR

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APPROVED:

OPINION COMMITTEE

W. V. Geppert, Chairman

Milton Richardson David Longoria Malcolm Quick Phillip Crawford

APPROVED FOR THE ATTORNEY GENERAL By: T. B. Wright